

AGRICULTURE AFFAIRS COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2008 Legislative Session

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AGRICULTURAL AFFAIRS COMMITTEE

IDAPA 29 - THE IDAHO POTATO COMMISSION

29.01.02 - RULES GOVERNING PAYMENT OF TAX AND USAGE OF FEDERALLY REGISTERED TRADEMARKS

DOCKET NO. 29-0102-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 22-1201, et seq., Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 2 of the October 3, 2007, Idaho Administrative Bulletin, Vol. 07-10, pages 214 through 225.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

Section 22-1211, Idaho Code was amended by the 2007 Legislature and signed by the Governor to increase the potato tax by \$.05 per hundred weight. Following the review required by statute, the Idaho Potato Commission voted unanimously to authorize an increase of \$.025.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: No fiscal impact.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact: Patrick J. Kole, VP Legal and Government Affairs, at (208) 334-2350.

DATED this 26th day of October, 2007.

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Patrick J. Kole, VP Legal and Government Affairs
Idaho Potato Commission
661 S. Rivershore Lane, Suite 230
PO Box 1670, Eagle, Idaho, 83616
(208) 334-2350 / Fax (208) 334-2274

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2007.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 22-1201, et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a non-technical explanation of the substance and purpose of the proposed rulemaking:

- 1. To clarify IPC tax calculation and reporting method;**
- 2. To modernize packaging rules; and**
- 3. To make trademarks available for marketing purposes.**

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

It is necessary to protect the public health, safety, or welfare and it confers a benefit by clarifying the tax rate and allowing the tax to be collected more uniformly and without ambiguity.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

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Section 22-1211, Idaho Code was amended by the 2007 Legislature and signed by the Governor to increase the potato tax by \$.05 per hundred weight. Following the review required by statute, the Idaho Potato Commission voted unanimously to authorize an increase of \$.025. As the Idaho Potato Commission operates on a September 1 to August 31 fiscal year, this temporary rule is necessary to coincide with that fiscal year and avoid confusion within the industry.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: No fiscal impact.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted. However, this rule was developed with input from the potato industry which is affected.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact: Patrick J. Kole, VP Legal and Government Affairs, at (208) 334-2350.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 23rd day of August, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 29 TITLE 02 CHAPTER 02

29.01.02 - RULES GOVERNING PAYMENT OF TAX AND USAGE OF ~~FEDERALLY REGISTERED~~ CERTIFICATION MARKS AND TRADEMARKS

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 29.01.02, "Rules Governing Payment of Tax and Usage of ~~Federally Registered~~ Certification Marks and Trademarks." ~~(3-15-02)~~()

02. Scope. These rules govern payment of taxes to the Idaho Potato Commission (the Commission); records required to be kept by growers, dealers, handlers, shippers, processors,

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container manufacturers, and out-of-state repackers of Idaho® potatoes; use of Certification Marks and Trademarks owned or administered by the Commission; branding of individual potatoes, state brand grade and packing requirements, reporting, labeling and revocation, and additional labeling requirements. (3-15-02)(____)

03. Citation. The official citation of these rules is IDAPA 29.01.02.000, et seq. For example, this rules is cited as IDAPA 29.01.02.001.03. In documents submitted to the Commission or issued by the Commission, these rules may be cited as Idaho Potato Commission "Rules Governing Payment of Tax and Usage of ~~Federally Registered~~ Certification Marks and Trademarks," IDAPA 29.01.02. (3-15-02)(____)

002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES.

For rulemakings conducted before July 1, 1993, written interpretations to these rules in the form of explanatory comments accompanying the order of proposed rulemaking and review of comments submitted in the order adopting these rules are maintained in the files of the Secretary of the Idaho Potato Commission and are available from the office of the Commission Secretary. For rulemakings conducted after July 1, 1993, written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking decision adopting these rules maintained in the files of the Secretary of the Idaho Potato Commission and are available from the office of the Commission Secretary. The Commission Secretary may be contacted in writing at the Idaho Potato Commission, P.O. Box ~~1068~~ 1670, ~~Boise Eagle~~, Idaho ~~83701~~83616, or may be reached by telephone at (208) 334-2350. (3-15-02)(____)

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The principal office of the Commission is in ~~Boise Eagle~~, Idaho. This office is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The Commission's telephone number is (208) 334-2350. The Commission's FAX number is (208) 334-2274. The Commission's mailing address: Idaho Potato Commission, Post Office Box ~~1068~~ 1670, ~~Boise Eagle~~, Idaho ~~83701~~83616. The street address of the Commission is: ~~599 West Bannock Street, Boise, Idaho 83702-5983~~ 661 S. Rivershore Lane, Suite 230, Eagle, Idaho 83616. All documents filed in all proceedings must be filed with the Commission at one of these addresses. (3-15-02)(____)

006. PUBLIC RECORDS ACT COMPLIANCE.

Except as provided by Rules 52, ~~and~~ 233, and law, all materials filed with the Commission pursuant to these rules and all materials issued by the Commission pursuant to these rules are public documents subject to inspection, examination and copying. (3-15-02)(____)

(BREAK IN CONTINUITY OF SECTIONS)

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100. GENERAL.

01. When Idaho Potato Commission Tax Is Due. The Idaho Potato Commission Tax shall be due on or before the time when such potatoes are first handled in the primary channels of trade and shall be paid not later than the fifteenth day of the month next succeeding the month in which such potatoes were handled in the primary channels of trade. See Section 22-1211, Idaho Code. (3-15-02)

02. Idaho Potato Commission Tax. There is hereby levied and imposed a tax of four cents (\$0.04) per hundredweight on potatoes covered by this act which tax shall be due on or before the time when such potatoes are first handled in the primary channels of trade and shall be paid not later than the fifteenth day of the month next succeeding the month in which such potatoes were handled in the primary channels of trade. In addition to the four cents (\$0.04) tax herein above provided for there is hereby levied and imposed an additional tax of ~~six~~ eleven cents (\$0.~~06~~11) per hundredweight on potatoes covered by this act; provided, however, said additional tax of ~~six~~ eleven cents (\$0.~~06~~11), or any portion thereof, shall only be due and collectible upon a determination by at least two-thirds (2/3) of the commission members that the anticipated expenditures for the next fiscal year following the year in which the determination is made will exceed the anticipated tax revenues to be collected from the said four cents (\$0.04) tax. Upon such a determination, the commission shall collect the additional ~~six~~ eleven cents (\$0.~~06~~11) tax or such portion thereof as is required by such determination, which shall be collected with, and as, other taxes imposed by this act. The person first selling or otherwise delivering potatoes into primary channels of trade shall be responsible for and make payment of all taxes imposed by this chapter. If such person is the dealer or shipper handling potatoes grown by another, he may charge against and recover from the grower of such potatoes or the person from whom he acquired them sixty percent (60%) of the tax. (3-15-02)()

03. Definitions - as Used in These Rules. Section 22-1204, Idaho Code, defines terms used in these rules. (7-1-93)

04. Growers', Dealers', Handlers', Shippers', Processors' Container Manufacturers' and Out-of-State Repackers' Records. Idaho Potato Commission Tax Returns - Audits - Inspections. (3-15-02)()

a. Every dealer or handler including out-of-state repackers shall keep a complete and accurate record of all potatoes handled by him in the primary channels of trade. Such record shall be in such form as the Commission's Executive Director, duly authorized agent, representative or employee shall prescribe. (7-1-93)()

b. In addition to such other information that the Executive Director, duly authorized agent, representative or employee requires, each grower, dealer, handler, shipper, processor, container manufacturer, and out-of-state repacker shall keep records that segregates purchases and sales of Idaho® potatoes by calendar month; records of inventories of Idaho® potatoes by calendar month; and records of inventories of containers bearing the registered Certification Marks of the Commission by calendar month. Such records shall be preserved for a period of two years and shall be open to inspection at any time upon written or oral request or demand by the Commission or its duly authorized agents, representatives, or employees. (3-15-02)()

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c. The Commission's duly authorized agent, representative or employee may enter upon the premises of any grower, dealer, handler, out-of-state repacker, ~~food~~ container manufacturer, processor or any other license agreement holder of Idaho® potatoes and examine or cause to be examined any books, papers, records, ledgers, purchase journals, sales journals, electronically and/or magnetically recorded data, computers and computer records or memoranda bearing upon the amount of taxes payable or the correct usage of any Idaho Trade or Certification Mark, and to secure any other information directly or indirectly concerned with the enforcement of Chapter 12, Title 22, Idaho Code, all rules adopted pursuant thereto and all licensing agreements entered into with the Commission. The Commission's duly authorized agents, representatives or employees may also inspect and take samples of any potatoes, potato products or containers from the premises used by a grower, dealer, handler, shipper, processor, container manufacturer, or out-of-state repacker. Regular audits shall be routinely performed by the Commission or its duly authorized agents, representatives, or employees to assure adherence with these rules. In addition, compliance audits may take place at any time. For further requirements see Section 22-1212, Idaho Code. (3-15-02)()

05. Calculation of Tax Due.

(3-15-02)

a. All first handlers of Idaho® Grown Potatoes shall pay the total tax due on all potatoes handled by them on a net weight basis, except as provided in Rule 100.05.b. Net weight shall be determined by subtracting from the gross scale weight the tare for dirt, rock and other foreign material only. Net weight shall then be multiplied by ninety percent (90%) which provides for a ten percent (10%) allowance for those potatoes that are unusable for human consumption. The amount of tax due is the tax rate currently imposed pursuant to Rule 100.02. multiplied by the hundredweight (cwt) calculated above. The following diagram illustrates the manner in which the formula is to be applied:

Tare		90%		CWT	
Gross Scale Weight	Less	(Dirt, rock and other foreign materials ONLY)	X	(Allowance for potatoes unfit for consumption is 10%)	= (Upon which TAX is DUE)

(7-1-93)

b. Any first handler of Idaho® Grown Potatoes who does not have reasonable access to a scale to calculate the tax due on a net weight basis, may make application to the Commission's Executive Director for permission to use the following alternate procedure:

(7-1-93)

i. Fresh Shipped Potatoes. On all Idaho® potatoes shipped fresh, a permitted handler shall pay the full Idaho Potato Commission Tax on all fresh shipments which meet State Grade Standards or Federal Fresh Market Standards whether sold interstate or intrastate. (3-15-02)

ii. Fresh Potatoes Not Meeting Grades. A ten percent (10%) discount per hundredweight shall be allowed on all intrastate shipments of fresh potatoes not meeting State Grade Standards or Federal Fresh Market Standards, such as culls or processing grade potatoes sold to processors, after tare is taken for dirt and foreign material only, to allow for that portion which is unusable for human consumption. Statements showing Idaho Potato Commission Tax

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liability shall be mailed to fresh shippers each month, and payment of Idaho Potato Commission Tax due to be made within thirty days of receipt of statement. This rule is not to be construed as authorizing any shipments of potatoes contrary to Section 22-901, Idaho Code. (3-15-02)

06. Tax Reports to Be Made by Growers, Dealers, Handlers, Shippers and Processors. A report on a form approved by the Commission, showing total weight handled for a given period of time and the Idaho Potato Commission tax due are to be sent to the Idaho Potato Commission office with the tax payment. These reports are to be made on forms furnished by the Commission and shall show such other information as the Commission may require.

(~~3-15-02~~)()

(BREAK IN CONTINUITY OF SECTIONS)

102. CERTIFICATION MARKS FOR IDAHO® POTATO CONTAINERS.

01. Containers. All potatoes grown in Idaho and packed or repacked in containers in or outside of the state of Idaho shall be in containers printed, labeled or stenciled in a plain and legible manner with one (1) of the Commission's registered Certification Marks, and the "GROWN IN IDAHO®" Certification Mark. An exact reproduction of the Commission's Certification Marks appears in appendix A. Certification Marks may not be stamped on any Idaho® potato container without a temporary written variance. All containers must use Idaho specific approved produce code identification numbers, where the same have been obtained and approved. No container of Idaho® potatoes or potato products may be manufactured or used without prior written approval of the Commission or its employee. (~~3-15-02~~)()

a. Upon written application, the Idaho Potato Commission may grant a variance from these rules for special purpose shipments for charity, certified seed, experimentation and processing. If a variance is granted, the applicant shall comply with all terms and conditions of such variance. If applicable, the application shall be accompanied by a valid Certificate of Privilege issued by the Idaho and Eastern Oregon Potato Committee, and the applicant shall furnish copies of all of the reports required by the Idaho and Eastern Oregon Potato Committee to the Idaho Potato Commission. (~~3-15-02~~)()

02. Marks. No person, firm or corporation packing or repacking potatoes or potato products outside of the state of Idaho shall use any of the Commission's Certification Marks on any containers of potatoes or potato products packed or repacked outside the state of Idaho unless they have first executed an agreement for the use of the Certification Marks with the Idaho Potato Commission, and unless they are actually packing or repacking in such containers Idaho grown potatoes or potato products made from Idaho, grown potatoes. (3-30-01)

03. Agreement. No person, including without limitation manufacturers, container manufacturers, growers, shippers, processors and repackers, shall use or reproduce any of the Commission's Certification Marks on any container without first executing an agreement for the use of the marks with the Idaho Potato Commission. (7-1-93)

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04. Recognition. Whenever the “GROWN IN IDAHO®,” “IDAHO®,” or other Certification Marks are used, recognition must be given that the marks are registered under the appropriate Federal statute. This recognition must be: by printing a legible capital “R” inside a circle (R)®, immediately after the word “IDAHO” or where designated by a duly authorized employee of the Commission. (3-30-01)()

05. No Certification Mark. No Certification Mark shall be incorporated into any private label, brand or seal but shall be portrayed without embellishment as shown in appendix A. (3-30-01)

06. Not Incorporated. The word “IDAHO®,” shall not be incorporated into any private label, brand or seal unless such label, brand or seal was registered with the U.S. Patent Office prior to January 1, 1966. (3-30-01)()

07. Size. ~~When a~~ Certification Mark ~~is~~ shall be used on the front of a one hundred-pound (100) sack type container, it shall not be less than five (5) inches in diameter or width and shall not be placed closer than two (2) inches from the bottom of said container. ~~When a~~ Any Certification Mark ~~is~~ used on the rear of a one hundred-pound (100) sack type container, it shall not be less than twelve (12) inches in diameter or width. The marks may also be used on both the front and back of one hundred pound (100) sack type containers, if placed as indicated and in the sizes indicated. ~~Unless a variance has been approved by the Commission.~~ (3-15-02)()

08. Limitation of Use. On fifty (50) pound sack type containers, a Certification Mark shall be used as on the one hundred (100) pound containers, but in proportionate sizes. (7-1-93)

09. Other Type Containers. On all sack type containers of less than fifty (50) pounds, a Certification Mark shall appear plainly visible on the front of the containers; and it shall be in relative proportion to brands, labels or other printed matter thereon, but not less than one and one-half (1 1/2) inches in diameter or width. ~~When registered and upon written approval by the Commission, a Spuddy Buddy Certification Mark may be used on a container.~~ (3-15-02)()

10. Box Type Containers. (3-30-01)

a. On all box type containers in which U.S. No. 1 grade Idaho® Potatoes will be packed, a Certification Mark may be located on the sides, ends or top of the container as desired, but shall be so placed and of such size as to be plainly visible. (3-15-02)

b. On all box type containers in which number two (2) grade Idaho, Potatoes will be packed, packing is permitted only when the following requirements are met: (3-30-01)

i. The container must be manufactured in a kraft, or non-colored cardboard material and be of a single piece construction; (3-30-01)

ii. The rectangular “Grown in Idaho®” certification mark shall be placed on each side and end panel of the container, with a width measurement of three and one-half (3 1/2) inches and length measurement of five and one-half (5 1/2) inches. The mark shall be located as shown in Appendix B; (3-30-01)()

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iii. The certification mark "Idaho® Potatoes" shall be printed on all four (4) sides of the container in one (1) inch lettering in the locations shown in Appendix B; ~~(3-30-01)~~(____)

iv. The words "U.S. NO. 2" shall be printed on all four (4) sides of the container in one (1) inch lettering in the locations shown in Appendix B and on one (1) of the top flaps of the container; (3-30-01)

v. The top one and three quarters (1 3/4) inches of the carton shall contain no preprinting on all four (4) sides of the container; (3-30-01)

vi. One (1) of the elongated top flaps shall contain the "Grown in Idaho®" certification mark with a width of three and one-half (3 1/2) inches and length of five and one-half (5 1/2) inches, together with the certification mark "Idaho® Potatoes" in one (1) inch height and the words "U.S. NO. 2" in one (1) inch height; ~~(3-30-01)~~(____)

vii. Product code identification numbers on containers bearing the certification marks shall use Idaho specific codes where the same have been obtained and approved; and (3-15-02)

viii. All other requirements regarding container packaging set forth in these rules and the license agreements of the Idaho Potato Commission apply to the use of this type of container. (3-30-01)

11. Tote Bin Type. On all tote bin type containers, Certification Marks must be used on the front of said container but may be used elsewhere and shall not be less than twelve (12) inches in diameter or width. (7-1-93)

12. Identity of Commodity. All containers bearing the marks shall specify the identity of the commodity contained therein and the name and place of business of the manufacturer, packer, licensee, or distributor of the commodity. Containers which do not comply with the rules of the Idaho Potato Commission shall not be used by any ~~manufacturer, packer or distributor~~ grower, dealer, handler, shipper, processor or out-of-state repacker for any potatoes or potato products subject to these rules. ~~(7-1-93)~~(____)

13. Words Printed. All potatoes grown in Idaho and packed or repacked in Idaho shall have the words "PACKED IN IDAHO" printed on the container. (7-1-93)

14. Sack Type Containers -- Fifty Pounds or Over. On all sack type containers for fifty (50) pounds or over the words "PACKED IN IDAHO" shall be located on the front lower half of the container but not closer than six (6) inches to the bottom thereof. (7-1-93)

15. Sack Type Containers -- Less Than Fifty Pounds. On all sack type containers containing less than fifty (50) pounds of potatoes the words "PACKED IN IDAHO" may be placed anywhere on the container but shall be so placed as to be plainly visible. (7-1-93)

16. Location of Words. On all box type containers the words "PACKED IN IDAHO" may be located on the ends, sides or top of the container but shall be so placed as to be plainly visible. (7-1-93)

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17. Colors. All marks when used and the words “PACKED IN IDAHO” shall be in color or colors in contrast with the color of the container. (7-1-93)

18. Use. Only in connection with potatoes and potato products grown within the state of Idaho may growers, handlers, shippers, processors and packers use the name “IDAHO®” in any mark, label or stencil applied to containers for such produce and products. The growers, dealers, handlers, shippers, processors, and packers of potatoes within the state of Idaho are not precluded from processing, packing and shipping potatoes grown outside the state of Idaho so long as such potatoes are not misrepresented or misbranded as Idaho® Potatoes. (~~3-30-01~~)()

19. Compulsory Printing. Printing of the mark “GROWN IN IDAHO®” and the words “PACKED IN IDAHO” is compulsory on all potato containers printed or contracted for after December 1, 1964. (~~3-30-01~~)()

20. Idahos. The word “IDAHOS” shall not be used on any container for potatoes, potato products nor on any other printing or advertising material or correspondence used to identify or promote Idaho potatoes. (3-30-01)

21. Exemption. Only shipments of certified seed potatoes to destinations outside of the state of Idaho are exempt from this rule. (7-1-93)

22. Other Rules. Other rules on containers, grade and size are covered under Title 22, Chapter 9, Idaho Code, and applicable marketing orders. (7-1-93)

103. BRANDING, AND GRADE AND PACKAGING REQUIREMENTS OF STATE BRAND.

01. Branding or Marking of Individual IDAHO® Potatoes. (~~7-1-93~~)()

a. Idaho® potatoes are considered to be branded when they are individually marked or identified as such. The methods of branding shall include: marking of individual potatoes by ink, heat, light, labeling, stickering, or puncturing and such other methods as may from time to time be authorized by the Idaho Potato Commission. (3-15-02)

b. The certification mark “Idaho®” shall be one (1) inch in length and one-quarter (1/4) inch in height unless prior Idaho Potato Commission written approval is secured and granted for any ~~variation~~ variance. (~~7-1-93~~)()

c. The purchase or the leasing or use of branding machines shall be entirely voluntary. (7-1-93)

d. There shall be no limitations on the size and type of containers in which branded potatoes may be packed as long as they meet the licensing requirements of Rule 102. (7-1-93)

e. Grade for branding shall be U.S. No. 1 or better (as defined in the U.S. Standards effective March 27, 1991) and not less than two (2) inches in diameter or four (4) ounces in weight. (7-1-93)

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f. Only Certification Marks owned or administered by the Idaho Potato Commission may be branded on potatoes grown in Idaho unless prior Idaho Potato Commission approval in writing is secured and granted for the use of additional words or designs. (3-15-02)

g. The operation of branding the word “Idaho®” upon potatoes shall be carried on only by licensees of the Idaho Potato Commission, and only upon such terms and conditions that will insure that only Idaho grown potatoes are branded as such. (3-15-02)

h. All varieties of potatoes grown in Idaho may be so branded. (3-15-02)

i. No person, firm or corporation may brand the word “Idaho®” on potatoes or sell machinery for the purpose of branding potatoes with any of the Idaho certification marks unless granted the right to do so by written agreement with the Idaho Potato Commission. (3-15-02)

j. Branded potatoes must use Idaho specific, approved produce code identification numbers, where the same have been obtained and approved. (3-15-02)

k. On all branded potatoes using a standard size sticker, the Certification Mark “Idaho® Potatoes” shall be printed in eight (8) point type and the Certification Mark “Grown in Idaho®” shall be printed with a minimum height of eight point one hundred twenty-nine (8.129) mm and minimum width of five point thirty-seven (5.37) mm. (3-15-02)

02. State Brand Grade and Packaging Requirements. Idaho® potatoes shall meet all requirements of U.S. Extra No. 1 as defined in the U.S. Standards for Grades of Potatoes, March 27, 1991, with the following additions or exceptions: (7-1-93)

a. Mature. (7-1-93)

b. Fairly well shaped. Defined as excluding the lower limits of such classification. (7-1-93)

c. Appearance as related to russetting. Defined: at least seventy five percent (75%) of the surface of the individual potato shall be moderately netted which means the netting will be solid net-like in appearance. (7-1-93)

d. Size shall be two and one eighth (2-1/8) inches in diameter and four (4) ounces minimum, eleven (11) ounces maximum. Each lot shall meet the specifications of Size A as defined in 51.1545, Table I(2) of the Standards. (7-1-93)

e. Tolerances for grade defects are defined in 51.1546(a)(2), for U.S. No. 1. (7-1-93)

f. All other tolerances and definitions of the Standards apply. (7-1-93)

03. Packaging. (7-1-93)

a. Container Requirement: Maximum size not to exceed twenty (20) pounds. (7-1-93)

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b. Miscellaneous Requirements: Use of the state brand packaging shall be entirely voluntary. Potatoes grown only in Idaho may be packed in state branded containers. State branded containers shall be packed only in Idaho. All varieties of potatoes grown in Idaho may be packed in state branded containers. The Commission shall require a written agreement between the Idaho Potato Commission and Idaho packers for the use of the state brand. All state branded containers shall be Federal-State inspected. (3-15-02)

c. The grade used in state brand containers shall be as defined in Rule 103.03 and "Idaho State Code 22-908" and "Federal-State Inspected" shall be printed in three-eighths (3/8) inch or larger letters, on front of each container. (7-1-93)

d. If individually branded Idaho® potatoes are packaged in state brand packaging they must meet grade requirements as defined in Rule 103.03. (7-1-93)

104. REPORTING, LABELING AND REVOCATION.

01. Reporting of Fresh Shipments of Potatoes. (7-1-93)

a. Effective July 1, 1976, growers, dealers, handlers, and shippers of Idaho® potatoes ~~who have a valid licensing agreement with the Idaho Potato Commission for the use of the "Grown in Idaho®" registered trademark on potato containers~~ are required to report shipments of all fresh Idaho grown potatoes ~~to designated geographical locations~~ giving information as to weight, packaging and type of receiver. Reporting forms will be furnished for this information by the Idaho Potato Commission ~~and information will be sent to and tallied by an independent accounting firm~~. All information received ~~by this firm~~ will be kept in strictest confidence as to individual shipments. (7-1-93)()

b. The purpose of this information is to provide the Idaho Potato Commission with information concerning fresh potato sales in geographical marketing areas receiving Idaho® grown potatoes to enable it to design and evaluate advertising and marketing programs. (7-1-93)

02. Labeling Containers of Fresh Idaho® Potatoes to Indicate the Variety Packed Therein. (7-1-93)()

a. All potatoes grown in Idaho that are packed or repacked in containers in Idaho, or packed or repacked in containers outside of Idaho under an out-of-state packer license agreement, shall be packed or repacked in containers that are printed, marked, labeled or stenciled in a plain and legible manner that identifies the variety packed therein. (7-1-97)

b. No container may contain more than one (1) variety of potato, except as provided by written variance for non-russet variety potatoes. (7-1-97)()

c. Any mark, label or stencil required by this rule shall be conspicuously placed on the container and printed in a color contrasting with the background and shall be of a size determined as follows: (7-1-93)

i. For bags and other containers holding one hundred (100) pounds of potatoes or

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more, the letters of the label shall be at least one (1) inch high; (7-1-93)

ii. For bags and other containers holding fifty (50) pounds or more of potatoes, but less than one hundred (100) pounds, the letters of the label shall be at least three-fourths (3/4) of an inch high; (7-1-93)

iii. For bags or other containers holding less than fifty (50) pounds of potatoes, the letters on the label shall be five-eighths (5/8") of an inch high. (7-1-93)

iv. For containers holding less than five (5) potatoes, the letter on the label shall be in a size that is plainly visible and approved in writing by a duly authorized Commission employee.
()

d. Any person seeking authorization to comply with this rule in a manner other than that specified herein shall submit a written request to the Commission for approval of an alternate method of compliance, which alternative method shall be in substantial compliance with these standards and which request shall describe in detail the proposed alternate method of compliance. The Executive Director of the Commission or a duly authorized employee shall have the authority and responsibility to review such requests and rule whether they should be allowed, said determination to be based upon a finding that such alternate method has nor has not been shown to comply with the purpose and meet the standards of this rule; provided, any interested person may request in writing that the Commission grant a de novo review of said request at a subsequent regular meeting deemed convenient and appropriate by the Commission, which request the Commission may in its discretion, either grant or deny. (7-1-93)()

e. No potatoes grown in Idaho and packed or repacked in containers in Idaho, or packed or repacked outside of Idaho under an out-of-state packer license agreement, shall carry or be printed, labeled or identified with the GROWN IN IDAHO® or IDAHO® marks unless this rule is fully complied with as respects said potatoes. (7-1-93)

f. All persons growing potatoes in Idaho or packing or repacking in containers in Idaho, or packing or repacking outside of Idaho under an out-of-state license agreement, shall have the affirmative duty to avoid and refrain from ambiguous or misleading practices, acts or representations and to eliminate the same in marketing or handling Idaho® potatoes if such practice does or is likely to mislead any purchaser or consumer regarding the quality and variety of Idaho® potatoes purchased by such buyer or consumer. (7-1-93)

g. All persons licensed as of ~~January 3, 1996~~ October 31, 2007, shall have until August 31, ~~1996~~ 2008, to use existing supplies of containers and such use of existing supplies of containers shall not be a violation of Rule 104.02.a. or 104.02.b. (7-1-93)()

03. Revocation of Right to Use Marks. (7-1-93)

a. The Commission shall have the power to revoke the right of any person, firm or corporation to use any of the Commission's Certification Marks or Trademarks if such person, firm or corporation fails to pay any advertising tax assessed against it, license fees, or royalties, or fails to comply with any of these rules or applicable law. (7-1-93)()

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b. Revocation of the right to use the Certification Marks or Trademarks shall not occur without reasonable notice of at least twenty (20) days and an opportunity for a hearing pursuant to Section 67-5242, Idaho Code. However, where the Executive Director determines that expedited action is necessary, he may: (7-1-93)(____)

i. Issue an order immediately suspending the right to use any of the Commission's Certification Marks or Trademarks pending a hearing, which hearing shall be held within twenty (20) days from the Executive Director's order; or (7-1-93)(____)

ii. Issue an order conditioning the right to use any of the Commission's Certification Marks or Trademarks pending a hearing, which hearing shall be held within twenty (20) days from the Executive Director's order; or (7-1-93)(____)

iii. Issue an order directing that the user of the Commission's Certification Marks or Trademarks show cause why the right to use the marks should not be suspended or conditioned further. (7-1-93)(____)

105. ADDITIONAL LABELING REQUIREMENTS, ~~FRESH~~ POTATOES (RULE 105).

01. Disclosure of Geographic Growing Area of Origin upon Potato Containers. All persons doing business in the state of Idaho are required to disclose the growing area of origin upon all potato containers ~~packed, repacked, handled or brokered by said person~~ in accordance with this rule and Section 22-1207, Idaho Code. For purposes of these rules, doing business in the state of Idaho means the doing of any of the acts which would subject a person to the jurisdiction of the courts of this state or defined in Section 5-514, Idaho Code. (10-26-94)(____)

02. Compliance for Idaho Grown Potatoes. For potatoes "Grown in Idaho®," this rule is complied with by meeting the requirements of Rule 102. (10-26-94)

03. Compliance for Private Brands or Labels That Reference Idaho Locations. Private brands or labels of containers that reference an Idaho location, geographical feature or otherwise attempt to imply directly or indirectly that a container of potatoes contains potatoes grown in Idaho when in fact such is not the case are prohibited. (10-26-94)

04. Compliance for Private Brands or Labels That Do Not Reference Idaho Locations. Private brands or labels that do not reference an Idaho location, geographical feature or otherwise attempt to imply directly or indirectly that a container of potatoes contains potatoes grown in Idaho when in fact such is not the case, but only have an Idaho address on the container, are permitted when approved by the commission or its designee. This rule is complied with by private brands or labels that: (10-26-94)

a. Meet the requirements of Rule 104.02.c; (10-26-94)

b. State the geographical state of origin of the potatoes followed by the word "potatoes"; and (10-26-94)

c. The lettering size of the Idaho address on the container does not exceed one-half (1/2) inch for containers fifty (50) pounds or greater and one-quarter (1/4) inch for containers less

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than fifty (50) pounds. For example, for potatoes grown in the state of Washington, the phrase “Washington potatoes” would comply with these rules. The use of the words “Grown in” preceding the state of origin is prohibited. (10-26-94)

106. ADDITIONAL REQUIREMENTS FOR USE OF TRADEMARKS (RULE 106).

01. Marks. No person is permitted to use any trademark owned or administered by the Commission unless authorized to do so pursuant to a license agreement entered into with the Commission. ()

02. Agreement. Trademarks owned or administered by the Commission may be licensed for use as permitted under federal and state law and as authorized by the Commission. ()

03. Royalty Fees. In addition to license fees, the Commission may set royalty fees for the use of trademarks. ()

04. Reproductions. Exact reproductions of the trademarks owned or administered by the Commission are set forth in Appendix C of these rules. ()

1067. -- 999. (RESERVED).

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APPENDIX A



APPENDIX C (NEW GRAPHICS)

